

DRAFT
Subject to Legal Review for Clarity and Consistency
April 3, 2003

Chapter Twenty-Three

Exceptions

Article 23.1: General Exceptions

1. For purposes of Chapters Three through Seven (National Treatment and Market Access for Goods, Rules of Origin and Origin Procedures, Customs Administration, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters Eleven, Thirteen, and Fifteen¹ (Cross-Border Trade in Services, Telecommunications, and Electronic Commerce), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement.² The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health.

Article 23.2: Essential Security

Nothing in this Agreement shall be construed:

- (a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
- (b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations under the United Nations Charter with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

Article 23.3: Taxation

¹This Article is without prejudice to whether digital products should be classified as goods or services.

²If Article XIV of GATS is amended, this Article shall be amended, as appropriate, after consultations between the Parties.

DRAFT
Subject to Legal Review for Clarity and Consistency
April 3, 2003

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.
3. Notwithstanding paragraph 2:
 - (a) Article 3.2 (Market Access – National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and
 - (b) Articles 3.13 (Market Access – Export Taxes) and 3.14 (Market Access – Luxury Tax) shall apply to taxation measures.
4. Subject to paragraph 2:
 - (a) Article 11.2 (Cross-Border Trade in Services – National Treatment) and Article 12.2 (Financial Services – National Treatment) shall apply to taxation measures on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and
 - (b) Articles 10.2 (Investment – National Treatment) and 10.3 (Investment – Most-Favored Nation Treatment), Articles 11.2 (Cross-Border Trade in Services – National Treatment) and 11.3 (Cross-Border Trade in Services – Most-Favored Nation Treatment), and Articles 12.2 (Financial Services – National Treatment) and 12.3 (Financial Services – Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances, gifts, and generation-skipping transfers,

except that nothing in those Articles shall apply:

- (c) any most-favored-nation obligation with respect to an advantage accorded by a

DRAFT
Subject to Legal Review for Clarity and Consistency
April 3, 2003

Party pursuant to a tax convention;

- (d) to a non-conforming provision of any existing taxation measure;
- (e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
- (f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;
- (g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of GATS);
- (h) to a provision that conditions the receipt, or continued receipt of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan; or
- (i) to any excise tax on insurance premiums adopted by Chile to the extent that such tax would, if levied by the United States, be covered by subparagraphs (d), (e), or (f).

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, Article 10.5(2), (3), and (4) (Investment – Performance Requirements) shall apply to taxation measures.

6. Article 10.9 (Expropriation and Compensation) and Article 10.15 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation or a breach of an investment agreement or investment authorization. However, no investor may invoke Article 10.9 as the basis of a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 10.9 with respect to a taxation measure must first refer to the competent authorities set out in Annex 23.4 at the time that it gives its notice of intent under Article 10.15(4) the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 10.15.

Article 23.4: Balance of Payments Measures on Trade in Goods

DRAFT
Subject to Legal Review for Clarity and Consistency
April 3, 2003

Should a Party decide to impose measures for balance of payments purposes, it shall do so only in accordance with that Party's rights and obligations under GATT 1994, including the *Declaration on Trade Measures Taken for Balance of Payments Purposes* (1979 Declaration) and the *Understanding on the Balance of Payments Provisions of the GATT 1994* (BOP Understanding). In adopting such measures, the Party shall immediately consult with the other Party and shall not impair the relative benefits accorded to the other Party under this Agreement.³

Article 23.5: Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

Article 23.6: Definitions

For purposes of this Chapter:

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and taxation measures do not include:

- (a) a customs duty; or
- (b) the measures listed in exceptions (b) and (c) of the definition of customs duty.

³ For greater certainty, this Article applies to balance of payments measures imposed on trade in goods.

DRAFT
Subject to Legal Review for Clarity and Consistency
April 3, 2003

Annex 23.4

Competent Authorities

For purposes of this Chapter:

competent authorities means

- (a) in the case of Chile, the *Director del Servicio de Impuestos Internos, Ministerio de Hacienda*; and
- (b) in the case of the United States, the Assistant Secretary of the Treasury (Tax Policy), Department of the Treasury.